the property may be sold under the order of court and any deficiency between the amount realized and the contract price, be paid by the vendee; or a certain time for payment fixed, after which the vendee's right to specific performance will be barred. *Clark* v. *Hall,* 7 Paige (N. Y. Ch.) 382. In American practice it seems to have been the custom, on the failure of the vendee to take advantage of the decree, to grant the vendor the former remedy, whether the original decree was sought by the vendee or the vendor. *Burnap* v. *Sidberry,* 108 N. C. 307, 12 S. E. 1002; *Corbus* v. *Teed,* 69 Ill. 205. The decision of the principal case is based on English authority. In England the doctrine prevails that on the failure of the vendee to avail himself of a decree of specific performance, the vendor may rescind the contract. *Foligno* v. *Martin,* 16 Beav. 586, 22 L. J. Ch. 502; *Sweet* v. *Meredith,* 4 Giff. 207, 32 L. J. Ch. 147; *Simpson* v. *Terry,* 34 Beav. 422. The vendor should not be held to the contract and compelled to take proceedings for obtaining the purchase money which may be ultimately unavailing. *Foligno* v. *Martin, supra.* The earlier rule was, that the contract could be rescinded and a recovery be had for damages which the plaintiff had sustained from the breach of the contract. *Sweet* v. *Meredith, supra.* But it is now held inconsistent for the court to rescind such a contract and at the same time give damages for its breach. *Henty* v. *Schroder,* 12 C. D. 666.

STATUTES—CONSTRUCTION—WHAT CONSTITUTES CONVICTION.—By a statute the crime of prison breach was defined an escape, by force and violence, of one confined to jail on conviction of a criminal offense. Pending the determination of a writ of error which resulted in a reversal of the judgment, the defendant, convicted in the lower court, escaped by force. *Held,* there is no conviction within the meaning of the statute. *State* v. *Fishner* (W. Va.), 81 S. E. 1046.

There is conflict as to whether there is a conviction on the finding of a verdict of guilty by the jury before judgment is pronounced by the court. Where the governor is allowed the power of pardon "after conviction," the finding of a verdict of guilty by the jury is held a conviction. *Blair* v. *State,* 25 Gratt. (Va.) 850; *Com.* v. *Lockwood,* 109 Mass. 323, 12 Am. Rep. 699. But where such a construction would operate against the accused, as in statutes regulating the qualifications of witnesses, conviction is given a narrow and technical meaning and implies a judgment by the court. *Faunce* v. *People,* 51 Ill. 311. The same rule applies to statutes regulating the credibility of witnesses. *Com.* v. *Gorham,* 99 Mass. 420. Likewise where a statute imposes the cost of the suit upon the convict. *York County* v. *Dalhousen,* 45 Pa. St. 372. Also where a statute effects the forfeiture of a liquor license upon a conviction of the holder. *Com.* v. *Kiley,* 150 Mass. 325, 23 N. E. 55. However it has been held as to the forfeiture of a liquor license bond that the finding of a verdict of guilty by the jury is a conviction. *Quintard* v. *Knoedler,* 53 Conn. 485, 2 Atl. 752. There seems to be no case going so far in applying this strict rule of construction as the principal case. And as penal statutes should receive a strict construc-

tion there seems sound reason for it. But the weight of authority is clearly the other way, and a judgment of the lower court is sufficient regardless of the finding on appeal. *State* v. *Alexander*, 76 N. C. 231, 22 Am. Rep. 675; *Hackett* v. *Freeman*, 103 Iowa 296, 72 N. W. 528.

SUBROGATION—FRAUDULENT CONVEYANCE—CONSTRUCTIVE NOTICE OF FRAUD.—A debtor conveyed land to his wife in fraud of a creditor who had obtained a judgment on his claim. The creditor filed a lis pendens giving notice that he would contest the conveyance on the ground of fraud. A third person, without actual notice of the fraud, bought the land from the debtor's wife, assuming and paying off a mortgage on same. The conveyance to the debtor's wife was set aside as fraudulent. *Held*, the purchaser is entitled to subrogation to the rights of the mortgagor whom he has satisfied. *Tibbetts* v. *Terrill* (Col. App.), 140 Pac. 936.

As a general rule, where one buys property and pays off incumbrances, he will be subrogated to the rights of the holders of such incumbrances against the holder of any subsequent incumbrance. *Smith* v. *Dinsmore*, 119 Ill. 656, 4 N. E. 648; *Simpson* v. *Ennis*, 114 Ga. 202, 39 S. E. 853. The subsequent incumbrances are subject to the satisfaction of the prior incumbrance, and the fact that a purchaser buys the property and pays off the prior incumbrances can in no way prejudice the rights of the subsequent lienors. *Davis* v. *John Farwell Co.* (Tex. Civ. App.), 49 S. W. 656. To refuse subrogation would be to unjustly enrich the subsequent lienor at the expense of one who has paid off the incumbrances to protect his title. And by the weight of authority subrogation will be granted whether the purchaser had notice of the subsequent incumbrances or not. *Tompkins* v. *Sprout*, 55 Cal. 31; *Davis* v. *John Farwell Co.* (Tex. Civ. App.), 49 S. W. 656. But it has been held that where one purchases property and assumes, as part of the purchase price, the payment of incumbrances thereon, he becomes the principal debtor, and when he pays off the incumbrances, they are thereby extinguished. *McDowell* v. *Jones Lumber Co.*, 42 Tex. Civ. App. 260, 93 S. W. 476; *De Roberts* v. *Stiles*, 24 Wash. 611, 64 Pac. 795. But it would seem that this rule is dependent upon the contract between the vendor and purchaser, and would have no application as to third parties. In some cases it has been evaded on the ground that when one has bought property and paid off a prior incumbrance on it without actual notice of subsequent lienors he did so for his own benefit and not for the benefit of the subsequent lienors. *Darrough* v. *Kraft Co. Bank*, 125 Cal. 272, 57 Pac. 983; *Capital National Bank* v. *Holmes*, 43 Col. 154, 95 Pac. 314.

SURETYSHIP AND GUARANTY—PAID SURETIES.—A bonding company was surety on a bond of a contractor, given for the completion of a building at a stated time. The company stipulated that it should not become liable unless given notice within thirty days of any default on the part of the contractor. The contractor made default, but no notice was given, and suit was brought on the bond. *Held*, the company is